

Virgin Islands Department of Health – Special Conditions
FFY 2002 IDEA Part C Grant

PREAMBLE: These special conditions are imposed by the U.S. Department of Education (Department) under the Department's regulations governing "high risk" grantees in 34 CFR §80.12 on the Virgin Islands Department of Health's (VIDH's) grant award under Part C of the Individuals with Disabilities Education Act (IDEA) for federal fiscal year (FFY) 2002. The special conditions are imposed to help ensure that the funds are expended for appropriate and timely services to infants and toddlers with disabilities and their families in the Virgin Islands.

I. EXPLANATION OF HIGH RISK STATUS

Under the authority of the Education Department General Administrative Regulations (EDGAR), 34 CFR §80.12, the Department has determined that VIDH is a "high risk" grantee for purposes of Part C of IDEA for FFY 2002 because of problems in addressing waiting lists for early intervention services. VIDH received Part C grants for federal fiscal years 1999, 2000 and 2001 as a "high risk" grantee with special conditions attached. Those conditions were designed to ensure prompt reimbursement to all vendors for appropriate expenditures and to prevent interruption of early intervention services to infants and toddlers with disabilities. VIDH is currently reimbursing all vendors in a timely manner through a contract with a financial management contractor. However, VIDH has not resolved all financial management requirement provisions of its FFY 2001 Special Conditions and has not eliminated waiting lists for evaluations and assessments and early intervention services to infants and toddlers with disabilities due to the inability to recruit and retain needed personnel as described in: 1) the terms and conditions of its previous award (special conditions for FFY 2001 attached to letter dated July 1, 2002); 2) VIDH's Quarterly Report submissions to OSEP dated September 16, 2002, December 16, 2002, March 17, 2003 and July 8, 2003; and 3) OSEP's site visit report to VIDH dated September 2, 2003.

Having waiting lists for needed Part C services means VIDH is not in compliance with IDEA because Part C requires that each eligible child and family receive services based on individualized need in accordance with an Individualized Family Service Plan (IFSP). Federal regulations specify that early intervention services are services designed to meet the developmental needs of each eligible child and the needs of the family related to enhancing the child's development. 34 CFR §303.12(a)(1).

Although these Special Conditions are attached to the FFY 2002 Part C grant award administered by VIDH, the Department acknowledges that, without interdepartmental, government-wide cooperation and communication, it is unlikely that VIDH, independently (without the assistance of the VI Office of Management

and Budget, VI Office of Personnel, and VI Office of Finance), can meet its timetable to hire and recruit needed personnel, and, in turn, eliminate waiting lists for services.¹

II. SPECIAL CONDITIONS

A. Financial Management Contractor.

1. General. By accepting the FFY 2002 Part C grant of the Individuals with Disabilities Education Act, VIDH is agreeing to continue to contract with the financial management contractor, VI Lutheran Social Services, that was approved by the United States Department of Education in a letter dated July 31, 2002. If, during the FFY 2002 grant award period, VIDH should amend its contract with the current financial management contractor or decide to change the current contractor, approved by the United States Department of Education, the Virgin Islands Department of Health will submit to the United States Department of Education for approval: 1) the name of a proposed contractor for financial management services to provide accurate accounting and timely payments of all obligations under Part C of the Individuals with Disabilities Education Act; 2) the fee or rate that such contractor will charge for such services prior to entering into final negotiations with said proposed contractor; and 3) the proposed contract provisions in accordance with Section II.A.2 of this document. Any such proposed contractor must have both adequate capacity and previous successful experience in the financial management of one or more federal grants awarded to an agency of the Virgin Islands where the amount of such federal grant funds is no less than the amount of the Part C grant.
2. Contract Provisions. The contract for financial management must include provision that address the following:
 - a. The contractor's role is limited to processing payments and disbursements, maintaining financial records and reporting. VIDH, and not the contractor, is responsible for approving proposed payments and for any recruiting, hiring, evaluating, licensing, and monitoring vendors or providers of goods and services for the Part C program;
 - b. During all times relevant to this contract, the contractor must maintain adequate insurance to cover all potential liability and loss from misfeasance and/or malfeasance by the contractor and/or its employees. Such insurance will be consistent with the requirements of Virgin Islands law;

¹ VIDH has an extensive and lengthy hiring process under its current VI personnel hiring system as follows: VIDH must process paperwork through the VI Office of Management and Budget, the VI Office of Personnel, and VI Office of Finance. Lastly, the Governor must approve VIDH's candidate. This procedure typically last 6 – 12 months but can take longer if VIDH is creating a new full-time position

- c. At the beginning of the contract period and prior to any draw downs or disbursements, VIDH must provide the contractor with a line item budget for the total amount of the Part C grant, to be used by the contractor to track projected and actual expenditures for the Part C program;
- d. Prior to any drawdowns or disbursements, the contractor must establish and utilize a separate bank account for the Part C program. Any and all Part C funds that VIDH draws down must be deposited directly into this account. The contractor will be responsible for disbursing any and all Part C funds from that account pursuant to approved payment requests submitted by VIDH. Any interest earned by or unclaimed funds remaining in such account must be returned to the United States Department of Education at least quarterly (see 34 CFR § 80.21(i));

So long as VIDH continues to expend funds within three to five business days from the time that VIDH “draws down” the funds from the Department (i.e., the funds are obligated and liquidated by VIDH), the United States Department of Education will **not** require that an interest-bearing bank account be maintained. However, any interest liability by VIDH is determined under EDGAR Part 80 and the Cash Management Improvement Act.

- e. Prior to any draw downs or disbursements, VIDH and the contractor follow established procedures and timelines for prompt and timely draw downs by VIDH and disbursements by the contractor consistent with the requirements below;
- f. VIDH will continue to present approved requests to the contractor for processing and payment no later than 14 business days from the date of the receipt of a notice of an account payable that is an allowable expense under Part C, or earlier if needed to ensure timely payment to one or more vendors or providers;
- g. VIDH and the contractor will continue to coordinate the timing of drawdowns and disbursements to ensure that payments to staff, vendors and providers are prompt and timely. VIDH will draw down sufficient Part C funds to cover each approved request for payment into the separate account.
- h. Disbursements must occur no later than 28 business days from the date of the receipt of an account payable that is an allowable expense under Part C, which includes the above-referenced 14 business days for VIDH to present requests for payment to the contractor and 14

business days for VIDH and the contractor to coordinate draw downs and disburse funds, or earlier than 28 business days if needed to ensure timely payment to one or more vendors or providers.

- i. All transactions under this contract are consistent with all applicable federal requirements, including OMB Circular A-87 and 34 CFR Parts 76 and 80;
- j. The contractor will continue to maintain financial records in accordance with federal requirements and produce quarterly reports for VIDH detailing: a) the date of its receipt of, and the amount of, each approved payment request; b) the date and amount of each draw down deposit; c) the date and amount of each payment or disbursement by the contractor; and d) any interest or other funds remaining in the account at the end of the quarter. These amounts must also be grouped by and comparable with the projections in the line item budget listed above;
- k. Any other such terms, consistent with items a-j above, as the parties believe are necessary to ensure timely drawdowns and payments to staff, providers and vendors under the Part C program.

B. Restricted Indirect Costs. Part C has a statutory requirement that prohibits the use of Federal funds to supplant non-Federal funds. The Department implements this statutory requirement through the EDGAR regulations at 34 CFR §§ 76.563 – 76.569 and require that certain costs that otherwise might be allowable under other programs are not accepted for States or Territories receiving formula grants under IDEA.² VIDH was to negotiate a restricted indirect cost rate with the United States Department of Interior (USDO I) as a stipulation of VIDH's FFY 2001 grant award. However, as of August 20, 2003, VIDH had not applied to USDO I for an approved restricted indirect cost rate. The current approved restricted rate expired on September 30, 2002. Until a new rate is negotiated and approved by USDO I, VIDH will continue to apply a restricted indirect cost rate of 4.53%. VIDH will submit a rate agreement proposal to USDO I and submit a signed copy of the approved rate agreement as soon as possible.

C. Quarterly Financial Reports. VIDH will provide quarterly reports to the United States Department of Education and to the VI Governor detailing: 1) the total number of disbursements (payments) made during the quarterly period; 2) for all disbursements included in number 1, the number of business days between the receipt of each account payable and the date of disbursement for that account; 3) the average number of business days for all disbursements during the quarterly period (the sum total of each number of business days listed in number 2 divided by the total number of disbursements listed in number 1); 4) an analysis of the causes for, and plan to reduce the number of, disbursements made more than 30

² OSEP Policy Memorandum #99-2, December 30, 1999.

business days after receipt of an account payable; and 5) any interest or other funds remaining in the Part C account at the end of the reporting period. These amounts must also be grouped by and comparable to the projections in the line item budget for the Part C program. The reports should include a status report on VIDH's progress in obtaining a restricted indirect cost rate agreement. These reports are due to the United States Department of Education on December 22, 2003, March 22, 2004, and June 22, 2004.

D. Recruiting and Hiring

Meeting short-term personnel needs

1. By November 30, 2003, VIDH will fill its vacancy for a full-time Developmental Therapist or provide Developmental Therapy through other mechanisms that address waiting lists for these services. The options for filling such vacancy could include 1) hiring a full-time early intervention service contractor (in addition to current part-time per diem providers); 2) offering retention bonuses to qualified providers; and 3) contracting with an agency to hire a full-time qualified provider.
2. By November 30, 2003, VIDH will hire any other personnel to eliminate the waiting list for early intervention services as outlined in 1) VIDH's September 16, 2003 and December 17, 2003 needs assessment reported to the Department; 2) OSEP's 2003 site visit report, dated September 2, 2003; and 3) Needs for early intervention services that VIDH has identified during the FFY 2001 grant period or identified during the FFY 2002 grant period prior to November 30, 2003.
3. In submitting required quarterly reports on December 22, 2003, March 22, 2004, and June 22, 2004 (in Section III (B) of this document), VIDH must report *by island* the:
 - a. Number of infants and toddlers with disabilities who were referred to Part C for evaluation and assessment;
 - b. Number of infants and toddlers who are waiting for evaluations and assessments in any of the five developmental areas within 45 days of initial referral;
 - c. Extent of the delay (i.e., the number of days past the 45 day timeline);
 - d. Number of additional infants and toddlers added to waiting list for evaluations and assessments during the reporting period;
 - e. Reasons for delay in evaluation/assessment including inadequate numbers of personnel in specific disciplines, delays in report writing, and in referring for evaluation/assessments, etc.

4. In submitting required quarterly reports on December 22, 2003, March 22, 2004, and June 22, 2004 (in Section III (B) of this document), VIDH must report *by island* the:
 - a. Number of infants and toddlers with disabilities for whom the initial IFSP was not completed within 45 days from the date of referral and the number of additional infants and toddlers with disabilities added to the list during that reporting period;
 - b. Number of infants and toddlers with disabilities and their families who are not receiving all the Part C services listed on the infant or toddler's IFSP;
 - c. Type(s) of early intervention service(s) (including services to families as well as to infants and toddlers with disabilities) that have waiting lists and for each early intervention service, the number of infants and toddlers with disabilities on the waiting list for that particular intervention service and the number of additional infants and toddlers with disabilities added to the waiting list for that service during the reporting period;
 - d. Minimum and maximum days that each eligible child or the family is on the waiting list for services;
 - e. Reasons for delay in provision of early intervention services including inadequate numbers of personnel in specific disciplines and scheduling IFSP meetings, etc.
5. By December 22, 2003, VIDH will submit to the Department a needs assessment of additional personnel required to immediately eliminate waiting lists for early intervention services.
6. By December 22, 2003, VIDH will submit to the Department its implementation plan to immediately eliminate waiting lists, including an explanation of all the steps VIDH is taking to expedite hiring and what other VI governmental agencies are doing or will do to expedite Part C hiring and timetables for doing so.
7. During the FFY 2002 grant period, VIDH will maintain its procedures to expedite its internal personnel system and related payroll process, including hiring per-diem personnel, so that all new staff can be deployed within one month of being hired and receive their first paycheck within one month of starting work.
8. During the FY 2002 grant period, VIDH will utilize its internal procedures for timely dismissal of non-performing personnel.

Addressing long-term personnel needs

9. By December 22, 2003, VIDH will implement its memorandum of agreement between VIDH and VIDE and will provide a status report on the implementation of strategies and timetables by each agency to jointly recruit and share needed specialized personnel, such as speech pathologists, physical therapists, occupational therapists, etc.
10. By December 22, 2003, VIDH will submit to the Department its implementation plan for meeting the long-term early intervention hiring needs, goals and priorities, accomplishments, and timetable to eliminate waiting lists, including an explanation of all the steps VIDH is taking to expedite hiring and what other VI governmental agencies are doing or will do to expedite Part C hiring and timetables for doing so.

Legislative action

11. VIDH will continue to make reasonable efforts in seeking legislative authority to conduct direct hiring of personnel for the VIDH Part C program, similar to the authority currently available to VIDE. A proposal will be sent to the legislature by October 31, 2003. If enacted, VIDH will implement any such hiring authority within 30 days of enactment.³

E. Property Management and Procurement

1. During the FFY 2002 grant period, the VIDH will continue to secure all property bought with federal Part C funds from inappropriate or unauthorized use. Such steps include controlling access to property supply houses and official vehicle parking lots, and controlling and tracking access to specific equipment. VIDH will continue to ensure that vehicles bought with Federal funds for the Part C program remain on the appropriate premises for use by authorized early intervention staff, investigate any reports of misuse, and take appropriate action against offenders.
2. During the FFY 2002 grant period, VIDH will continue to maintain an inventory management plan to account for all equipment, property and supplies purchased with Part C federal funds. The plan includes a policy that all property purchased with Federal program funds will be tagged, entered into a tracking system, and delivered to the appropriate location within 7 calendar days of receipt.

³ In correspondence dated September 3, 2003 (forwarded to OSEP on September 8, 2003), the VI Commissioner of Health submitted draft legislation to the VI Governor that would empower the Department of Health to hire needed early intervention personnel directly. The Commissioner requested the Governor's review and endorsement of this legislative proposal.

3. During the FFY 2002 grant period, VIDH will continue to coordinate with the Virgin Islands Department of Property and Procurement, the Virgin Islands Department of Finance, and the Governor's office on efforts to revise government-wide procurement procedures.

III. OTHER TERMS

- A. Enforcement. After receipt of the grant, if VIDH fails to meet any of the special conditions, the Department may take appropriate enforcement action. These terms and conditions do not preclude the Department from taking any otherwise authorized enforcement or other action at any time.
- B. Submission of Reports. In addition to the financial reports required under section II (C) above, VIDH must submit to the Department quarterly reports on its progress towards meeting each of the special conditions above and maintenance of conditions outlined in II (A), (B), (D) and (E). These reports are due to the United States Department of Education on December 22, 2003, March 22, 2004, and June 22, 2004. All reports should be submitted to the following two addresses:
 1. Philip Maestri, Office of the Deputy Secretary, U.S. Department of Education, 400 Maryland Avenue, SW, Room 7W106, Washington, DC 20202
 2. U.S. Department of Education, Office of Special Education Programs (OSEP) to the attention of Sheryl Parkhurst, 330 C Street, SW, Room 3094 Switzer Building, Washington, DC 20202
- C. Reconsideration and Modifications. At any time, VIDH may request reconsideration of the above special conditions by contacting the Department and stating reasons why VIDH believes particular conditions are no longer needed. Additionally, the Department may impose additional special conditions or modify these special conditions as appropriate. The Department will remove the special conditions at such time as VIDH demonstrates, to the Department's satisfaction, that the noncompliance has been corrected.
- D. Relationship to Other Conditions. These special conditions do not apply to any funds that may be still available under the FFY 1999 and FFY 2000 IDEA Part C grant awards to VIDH. However, VIDH may choose to include those funds in its financial management contract (described in section II (A) above) and those funds will be subject to the same obligation and liquidation time limits noted in section II (A) above.